

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed October 15, 2008. The Examiner is thanked for the thorough examination of the present application. Reconsideration and allowance of the application and pending claims are respectfully requested.

Rejection of Claims 1, 12 and 23 Under Obviousness-Type Double Patenting

Claims 1, 12 and 23 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting, as allegedly being unpatentable over claims 6 and 16 of U.S. Patent No. 7,298,758 (the '758 patent). In response to the double patenting rejection, Applicants submit herewith a terminal disclaimer pursuant to 37 C.F.R. §1.321(c). Applicants respectfully submit that the rejection has therefore been rendered moot, and respectfully request that the double patenting rejection be withdrawn.

Applicant has submitted the terminal disclaimer solely to advance prosecution of the application, without conceding that the double patenting rejection is properly based. In filing the terminal disclaimer, Applicant relies upon the rulings of the Federal Circuit that the filing of such a terminal disclaimer does not act as an admission, acquiescence or estoppel on the merits of the obviousness issue. See, *e.g.*, *Quad Environmental Tech v. Union Sanitary Dist.*, 946 F.2d 870, 874-875 (Fed. Cir. 1991); and *Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936, 941-942 (Fed. Cir. 1992). Furthermore, because the present Application and the '758 patent were both filed on July 8, 2003 and both claim priority to U.S. Provisional Patent Application No. 60/393,739 filed July 8,

2002, no difference in term results for a patent issuing from the present Application due to the Terminal Disclaimer submitted herewith.

In view of the foregoing, Applicant respectfully asserts that the obviousness-type double patenting rejection of claims 1, 12 and 23 has been overcome. Therefore, Applicant requests the rejection of these claims be withdrawn. Additionally, Applicant submits that dependent claims 7-11, 18-22, and 29-39 are allowable for at least the reason that these claims depend from an allowable claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of dependent claims 7-11, 18-22, and 29-39 be withdrawn.

CONCLUSION

Applicant respectfully submits that all pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

No fee is believed to be due in connection with this response to the Office Action. If, however, any fee is believed to be due, you are hereby authorized to charge any such fee to deposit account No. 50-0835.

Respectfully submitted,

/Sherry Womack/
Sherry Womack,
Reg. No. 62,356

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.
Suite 1500
600 Galleria Parkway S.E.
Atlanta, Georgia 30339
(770) 933-9500